

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 344

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Regulation of Massage Therapy

DATE: December 11, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill exempts from the massage establishment licensure requirements the following settings:

- the office of a Florida-licensed allopathic physician, osteopathic physician, advanced registered nurse practitioner, acupuncturist, chiropractic physician, podiatric physician, dentist, or physical therapist;
- the residence or office of a massage therapist’s client, a sports event, a convention, or trade show, excluding colonic irrigation, as provided by rules of the Board of Massage Therapy;
- a facility operating under a Florida-licensed hospital, nursing home or other facility licensed under ch. 400, F.S.; and
- a board-approved massage school, for instructional purposes.

This bill amends section 480.034, Florida Statutes.

II. Present Situation:

Massage Therapy

Chapter 480, F.S., provides for the regulation of massage therapy and massage establishments. A massage therapist is subject to discipline if the massage therapist practices massage at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by rules adopted by the Board of Massage Therapy, may provide massage services, excluding colonic irrigation, at the residence or office of a client, at a sporting event, at

a convention, or at a trade show.¹ Under s. 480.043, F.S., a massage establishment may not operate without a license granted by the Department of Health in accordance with rules adopted by the Board of Massage Therapy. An “establishment” is defined under chapter 480, F.S., to mean a site or premises, or portion thereof, wherein a massage therapist practices massage.² It is unlawful for any person to operate a massage establishment unless it has been duly licensed, except this criminal prohibition may not be construed to prevent the teaching of massage in Florida at a board-approved massage school. A person who operates a massage establishment without a license commits a first degree misdemeanor which is punishable by imprisonment of up to one year and the imposition of a fine of up to \$1,000.³

On March 27, 2003, the staff of the Joint Administrative Procedures Committee (JAPC) notified the Board of Massage Therapy that there did not appear to be authority as required by s. 120.536, F.S.,⁴ for the exemptions listed in Rule 64B7-26.001, Florida Administrative Code (2003). The rule stated:

The term “establishment” means the physical location of the massage establishment whether the location is owned or leased by the “owner” or is otherwise used by the owner⁵ for the practice of massage therapy. The term “establishment” does not include the office of a physician licensed under chapter 458, or 459, [F.S.], a chiropractic physician licensed under chapter 460, [F.S.], an acupuncturist licensed under chapter 457, [F.S.], a podiatrist licensed under chapter 461, [F.S.], a dentist licensed under chapter 466, [F.S.], or a physical therapist licensed under chapter 480, [F.S.] only to patients of the licensed physician, chiropractic physician, acupuncturist, podiatrist, dentist, or physical therapist.

The staff of JAPC further noted that there was no specific authority, no specific power or duty, granted by ch. 480, F.S., that enabled the Board of Massage Therapy to exempt the offices of specified health care practitioners from the definition and requirements of massage establishments.⁶ Subsections 480.034(1) and (4), F.S., provide a broad exemption to the requirements for massage therapy licensure to the practice of various health care practitioners.

(1) Nothing in this act shall modify or repeal any provision of chapters 458-464, inclusive, [medicine, osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathic medicine, optometry, and nursing] or of chapter 476 [barbering], chapter 477 [cosmetology], or chapter 486 [physical therapy].

¹ See section 480.046(1)(n), F.S.

² See s. 480.033(7), F.S.

³ See s. 480.047(1)(b), F.S.

⁴ Section 120.536, F.S., provides in part that: a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

⁵ The term “owner” means the sole proprietor, partnership, limited partnership, or corporation that operates the licensed massage establishment. See Rule 64B7-26.001(1), F.A.C.

⁶ Schools of massage do not have an exemption from the massage establishment licensure requirements of s. 480.043, F.S.

(4) An exemption granted is effective to the extent that an exempted person's practice or profession overlaps with the practice of massage.

Under ch. 480, F.S., the exemption does not extend to any other person who practices massage therapy in that health care practitioner's office, and does not exempt the office from the licensure requirements of massage establishments under s. 480.043, F.S.

Effective August 5, 2003, an amendment to Rule 64B7-26.001, F.A.C., repealed an exemption from the massage establishment licensure requirement for certain health care practitioners who authorize massage therapists to perform massage therapy on clients or patients at the practitioners' offices. The offices of such health care practitioners offering massage services would then be required to comply with the massage establishment licensing requirements as of August 5, 2003. The Board of Massage Therapy issued an emergency rule to facilitate the licensure of an estimated several hundred new massage establishments to prevent any restrictions on a patient's access to massage therapy which took effect on August 4, 2003. The emergency rule, Rule 64B7ER03-2, F.A.C., authorized the issuance of temporary permits as massage establishments to health care practitioners licensed under Florida Statutes: 457 (acupuncture), 458 (medicine), 459 (osteopathic medicine), 461 (podiatric medicine), and 486 (physical therapy) for up to 120 days to allow time for the application process and initial inspection by the Department of Health for the issuance of a massage establishment license pursuant to s. 480.043, F.S.

Health Care Facilities

Part XIII, ch. 400, F.S., requires clinics at which health care services are provided to individuals and which tender charges for reimbursement of such services, to be licensed. Most sole proprietorships, group practices, partnerships, or corporations that provide health care services by licensed health care practitioners are exempt from clinic licensure and are not otherwise licensed. Hospitals, ambulatory surgical centers and mobile surgical facilities must be licensed under chapter 395, F.S. Nursing homes are regulated under part II, chapter 400, F.S. Part IV, ch. 400, F.S., provides for licensure of home health agencies and for the development, establishment, and enforcement of basic standards that will ensure the safe and adequate care of persons receiving health services in their own homes.

III. Effect of Proposed Changes:

The bill exempts from the massage establishment licensure requirements the following settings:

- the office of a Florida-licensed allopathic physician, osteopathic physician, advanced registered nurse practitioner, acupuncturist, chiropractic physician, podiatric physician, dentist, or physical therapist;
- the residence or office of a massage therapist's client, a sports event, a convention, or trade show, excluding colonic irrigation, as provided by rules of the Board of Massage Therapy;
- a facility operating under a Florida-licensed hospital, nursing home or other facility licensed under ch. 400, F.S.; and

- a board-approved massage school, for instructional purposes.

The effective date of the bill is July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The following settings will be exempt from the costs associated with obtaining massage establishment licensure: the office of a Florida-licensed allopathic physician, osteopathic physician, advanced registered nurse practitioner, acupuncturist, chiropractic physician, podiatric physician, dentist, or physical therapist; the residence or office of a massage therapist's client, a sports event, a convention, or trade show, excluding colonic irrigation, as provided by rules of the Board of Massage Therapy; a facility operating under a Florida-licensed hospital, nursing home or other facility licensed under ch. 400, F.S.; and a board-approved massage school, for instructional purposes. The Department of Health reports that the application and initial license fee, including a \$5 unlicensed activity assessment, totals \$305; that the renewal application fee, including a \$5 unlicensed activity assessment, totals \$155; and that a change of ownership fee totals \$125. The Department of Health has indicated that as of December 3, 2003, there are 4,905 licensed massage establishments.

C. Government Sector Impact:

The Department of Health will no longer incur costs associated with requiring the owners of certain settings to obtain massage establishment licensure. Some of the settings which are exempt from the massage establishment licensure are a sole proprietor, partnership, limited partnership, or corporation of a Florida-licensed allopathic physician, osteopathic

physician, advanced registered nurse practitioner, acupuncturist, chiropractic physician, podiatric physician, dentist, or physical therapist which also employ or contract for licensed massage therapists to provide massage services to patients of the health care providers in those settings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
